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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 605

J. C. ANDEREGG, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The district court did not write an opinion. The opinion of the court of appeals (R. 7–8) is reported at 171 F. 2d 127.

JURISDICTION

The judgment of the court of appeals was entered on November 30, 1948 (R. 7–8). The petition for a writ of certiorari was filed on February 28, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether time for filing a suit under the Federal Tort Claims Act may be extended because of the acts or omissions of Government officers.

STATUTE INVOLVED

The pertinent portions of the Federal Tort Claims Act of August 2, 1946, 60 Stat. 842, 843–844, 845, 28 U. S. C. 931, 942 (1946 ed.), provided as follows:[1]

> SEC. 410. (a) Subject to the provisions of this title, the United States district court for the district wherein the plaintiff is resident or wherein the act or omission complained of occurred, including the United States district courts for the Territories and possessions of the United States, sitting without a jury, shall have exclusive jurisdiction to hear, determine, and render judgment on any claim against the United States, for money only, accruing on and after January 1, 1945, on account of damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person,

[1] The Federal Tort Claims Act was repealed, and its provisions were revised and reenacted into law as 28 U. S. C. 1291, 1346, 1402, 1504, 2110, 2401, 2402, 2411, 2412, 2671–2680 by the Act of June 25, 1948, effective September 1, 1948 (Pub. Law 773, 80th Cong., 2d sess.). Section 39 of the repealing act provides that existing rights and liabilities shall not be affected by the repeal. Since the case at bar arose prior to the repeal, it appears that any rights which petitioner may have against the United States herein are governed by the Federal Tort Claims Act as it existed at the time of the repeal.

would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred. Subject to the provisions of this title, the United States shall be liable in respect of such claims to the same claimants, in the same manner, and to the same extent as a private individual under like circumstances, except that the United States shall not be liable for interest prior to judgment, or for punitive damages. Costs shall be allowed in all courts to the successful claimant to the same extent as if the United States were a private litigant, except that such costs shall not include attorneys' fees.

(b) The judgment in such an action shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the Government whose act or omission gave rise to the claim. No suit shall be instituted pursuant to this section upon a claim presented to any Federal agency pursuant to part 2 of this title unless such Federal agency has made final disposition of the claim: *Provided,* That the claimant may, upon fifteen days' notice given in writing, withdraw the claim from consideration of the Federal agency and commence suit thereon pursuant to this section: *Provided further,* That as to any claim so disposed of or so withdrawn, no suit shall be instituted pursuant to this section for any sum in excess of the amount

of the claim presented to the Federal agency, except where the increased amount of the claim is shown to be based upon newly discovered evidence not reasonably discoverable at the time of presentation of the claim to the Federal agency or upon evidence of intervening facts, relating to the amount of the claim. Disposition of any claim made pursuant to part 2 of this title shall not be competent evidence of liability or amount of damages in proceedings on such claim pursuant to this section.

SEC. 420. Every claim against the United States cognizable under this title shall be forever barred, unless within one year after such claim accrued or within one year after the date of enactment of this Act, whichever is later, it is presented in writing to the Federal agency out of whose activities it arises, if such claim is for a sum not exceeding $1,000; or unless within one year after such claim accrued or within one year after the date of enactment of this Act, whichever is later, an action is begun pursuant to part 3 of this title. In the event that a claim for a sum not exceeding $1,000 is presented to a Federal agency as aforesaid, the time to institute a suit pursuant to part 3 of this title shall be extended for a period of six months from the date of mailing of notice to the claimant by such Federal agency as to the final disposition of the claim or from the date of withdrawal of the claim from such Federal agency pursuant to section 410 of this

title, if it would otherwise expire before the end of such period.

STATEMENT

This action under the Federal Tort Claims Act was instituted by petitioner on April 14, 1948, to recover more than $1,000 for the destruction of his house and personal property by fire due to the alleged negligence of army personnel R. 1–2, 4). Inasmuch as the fire occurred on January 2, 1945 (R. 1) and the Federal Tort Claims Act was enacted on August 2, 1946, the filing of the complaint was admittedly too late if the limitations provision in Section 420 of that Act (*supra*, p. 4) was applicable (see Pet. 3). In an attempt to obviate any objection on that ground, the complaint asserted that the United States should be estopped from relying upon the limitations provision, because, after filing a claim with proper officials shortly after the fire in accordance with the procedure then in effect for prosecuting such claims (Act of July 3, 1943, 57 Stat. 372), petitioner had followed all directions as to the prosecution of his claim, was led to believe that he was in the proper tribunal, and was not advised that his claim could not be settled administratively until after time for filing suit had expired (R. 2).

The United States moved to dismiss the complaint for lack of jurisdiction in that the claim was barred by the limitations provision (R. 3).

The district court dismissed the action (R. 5), and on November 30, 1948, the court below affirmed (R. 8), holding that the United States may not be sued except in strict accord with the conditions it has imposed, and that neither action nor neglect on the part of governmental officers may extend the time for suit which Congress has limited (R. 7).

ARGUMENT

Under the express provision of Section 420 of the Tort Claims Act, *supra,* p. 4, petitioner's claim is "forever barred." The fact that the claim was submitted for administrative determination cannot change this result since no administrative officer is authorized to waive the period of limitations prescribed in a law by which the United States consents to be sued. *Munro* v. *United States,* 303 U. S. 36; *United States* v. *Michel,* 282 U. S. 656, 660; *Finn* v. *United States,* 123 U. S. 227, 232–233. Thus, in the *Munro* case the fact that the Assistant United States Attorney had stated that service of a summons would suffice to toll the time limitations did not waive the requirement of service of the complaint within the statutory time. Such time requirements are jurisdictional and are subject to the same restrictions whether they state that "No such suit or proceeding shall be begun" (*United States* v. *Michel,* 282 U. S. 656, 658); "no suit * * * shall be allowed" (*Munro* v. *United States,* 303 U. S. 36,

38); or "suit shall be forever barred" (*United States* v. *Seminole Nation*, 299 U. S. 417, 421; *Finn* v. *United States*, 123 U. S. 227, 229). This necessarily follows from the fact that statutes permitting suit against the United States are strictly construed in its favor and no statutory requirement can be waived by Government officers. *United States* v. *Sherwood*, 312 U. S. 584, 590; *United States* v. *United States Fidelity Co.*, 309 U. S. 506, 513.

Section 410 of the Tort Claims Act, *supra*, pp. 2–4, which confers jurisdiction on district courts and defines the extent of the Government's liability under the Act does not purport to modify the express limitation in Section 420 as to time for bringing suit nor to change the settled rule as to the effect of such time limitation in statutes waiving governmental immunity from suit. Thus, the fact that in some aspects of tort claims the Government may occupy the same position as a private litigant does not, as petitioner asserts (Pet. 9), mean that exceptions may be engrafted upon the time limitations imposed by Congress.

CONCLUSION

The decision below is correct and the case does not warrant further review. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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APRIL 1949.

U. S. GOVERNMENT PRINTING OFFICE: 1949